IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.168 OF 2004

The Commissioner of Income Tax
Mumbai City - III, Mumbai .. Appellant.
V/s.
M/s.Nuclear Power Corporation
of India Limited, Mumbai .. Respondent.

Mr.A.S. Rao for the appellant.
Mr.A.K. Jasani for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 26TH SEPTEMBER, 2005.

P.C. :

1. Heard.

2. Admit.

3. The only question canvassed by the learned counsel appearing for the revenue is that the tribunal could not have dismissed the appeal for want of COD. In his submission the tribunal ought to have kept the appeal pending. Thus, he prayed for setting aside the impugned order with further direction to restore the appeal to the file of the tribunal with direction to be keep the appeal pending till the COD is received.

4. Per contra, Mr.Jasani, the learned counsel appearing for the respondent submits that almost more than four and half years have expired but till today

no steps have been taken by the appellant to get the COD. He submits that no useful purpose would be served by allowing the appeal with direction to keep it pending for years together. He, thus, submits that by consent of the parties the order of the tribunal be clarified and modified reserving liberty in favour of the Revenue to get the appeal restored to the file of the tribunal as and when the COD would be received. In that event, he on behalf of the respondent undertakes not to object to the restoration of the appeal. The submission made by Mr.Jasani is reasonable and needs acceptance. Hence, by consent of the parties, we modify the order and add one para to the impugned order reading as under just before the operative part of the impugned order.

"It is, however, made clear that it would be open for the appellant to apply to the Tribunal for restoration of their appeal in the event of receipt of COD by them. In that event, the respondent shall not object to the restoration of the appeal and upon such motion being made by the appellant, appeal shall be restored for being heard on merits."

6. With the above modification to the impugned order is confirmed and this appeal stands disposed of with no order as to costs.

(J.P. DEVADHAR, J.) (V.C. DAGA, J.)